A

## EMPAYAR CANGGIH SDN BHD

**v.**

## KETUA PENGARAH BAHAGIAN PENGUATKUASA KEMENTERIAN PERDAGANGAN DALAM NEGERI DAN HAL EHWAL PENGGUNA MALAYSIA & ANOR

B

COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA
ZAHARAH IBRAHIM JCA
C AZIAH ALI JCA
[CIVIL APPEAL NO: W-01-222-2010]
27 JUNE 2013

D ***ADMINISTRATIVE LAW:*** *Exercise of administrative powers - Reasoned decision - Seizure of machines and equipments by officers of Ministry of Domestic Trade and Consumer Affairs - Whether seizure done in exercise of investigative functions - Whether reasonable cause shown - Optical Discs Act 2000, ss. 38(2) & 52(a)*

E ***ADMINISTRATIVE LAW:*** *Judicial review - Application for - Operation of business without license - Seizure of machines and equipment from business premises - Whether seizure carried out with reasonable cause - Whether bona fide - Whether claim for damages allowed - Optical Discs Act 2000, ss. 38, 48 & 52*

F The appellant carried on the business of replicating video compact discs ('VCD') and compact discs ('CD') at its old premises and was granted an optical discs manufacturing licence by the Ministry of Domestic Trade and Consumer Affairs under the Optical Discs Act 2000 ('the Act'). Subsequently, the appellant was desirous of
G upgrading its business to that of replicating digital video compact discs ('DVD') at its new premises and in order to do so, the appellant needed a licence. On 28 February 2006, the appellant applied to the Domestic Trade Ministry for renewal of its existing licence under the Act and to operate the DVD replicating business
H at its new premises. However, on 2 March 2006, the officers from the Domestic Trade Ministry searched the appellant's new premises and seized the machines and equipment therein, together with other items. At that point of time, no licence had been granted in respect of the DVD replicating business at the new
I premises. Despite having written to the respondents, the latter was alleged to have failed to return the seized items to the appellant. Upon a joint inspection carried out, the appellant's items

were found to have been badly damaged. Hence, the appellant filed an application in the High Court to commence judicial review proceedings against the respondents and prayed for, *inter alia*, (i) a declaration that the seizure carried out was without reasonable cause; and (ii) damages suffered by the appellant due to the unlawful seizure. In dismissing the appellant's application, the High Court decided that the seizure was made with reasonable cause in the exercise of an investigative function. Hence, this appeal.

**Held (dismissing appeal with costs)**
**Per Zaharah Ibrahim JCA delivering the judgment of the court:**

**(1)** At the time the search was conducted, there was no licence issued for the installation of the DVD replicating machines and equipment at the new premises. Therefore, there could not be any manufacturer's code specified in any licence with respect to the premises for the machines and equipment installed there. That being the case, the seizure of the machines and equipment was clearly done in the reasonable belief that they contained information as to the commission of some offence, for which the search was conducted in the first place. Such seizure was therefore within the ambit of powers conferred on the respondents under s. 38(2) of the Act. (paras 31 & 33)

**(2)** The power to determine the practicability of removing items seized under s. 38 of the Act lies with the seizing officer. On the facts, the seizing officer decided that it was practicable to remove the items from the new premises and the removal of the items was done in the *bona fide* exercise of investigative functions under the Act, in particular, the powers under s. 38(2) of the Act. (paras 37-39)

**(3)** The second respondent, being the controller, clearly fell within the ambit of s. 52(a) of the Act and was fully protected under the Act. The seizure of the machines, among others, was done for the purpose of carrying into effect the Act and thus, the second respondent was protected against any action in respect of such acts. (para 43)

**(4)** There could also be no cause of action sustained against the first respondent since the seizure of the machines, equipment and other items were carried out by the assistant controllers of optical discs, who were, within the framework of the Act, under the control and supervision of the second respondent. There was nothing to show that the first respondent had given any of the orders, directions or instructions which led to the search, seizure and removal being carried out. The assistant controllers were not under the first respondent's control and supervision in the context of the Act. (paras 46 & 47)

**(5)** The appellant's claim for the declaration and damages could only succeed if the seizure was made without reasonable cause. On the facts, the said seizure was done with the reasonable belief that they contained information as to the commission of some offence, for which the search at the new premises was conducted. Further, the fact that, *inter alia*, the manufacturer's codes were issued for machines under a different licence for the old premises and used for machines installed in the new premises were sufficient to constitute reasonable cause so as to deny the appellant the relief sought under s. 48 of the Act. (paras 48, 49 & 53)

***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu menjalankan perniagaan mereplikasi video cakera padat ('VCD') dan cakera padat ('CD') di premis lamanya dan telah diberikan lesen untuk mengeluarkan cakera optikal oleh Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna di bawah Akta Cakera Optik 2000 ('Akta'). Perayu kemudian berhasrat untuk menaiktaraf perniagaannya dalam mereplikasi video cakera padat digital ('DVD') di premis barunya dan untuk melakukannya, perayu memerlukan lesen. Pada 28 Februari 2006, perayu telah memohon kepada Kementerian Perdagangan Dalam Negeri untuk memperbaharui lesennya di bawah Akta dan untuk menjalankan perniagaan mereplikasi DVD di premis barunya. Walau bagaimanapun, pada 2 Mac 2006, pegawai-pegawai dari Kementerian Perdagangan Dalam Negeri telah membuat carian di premis baru perayu dan menyita mesin-mesin dan alatan di situ, bersama-sama dengan barangan lain. Pada masa itu, tiada lesen diberikan bagi perniagaan mereplikasi DVD di premis baru tersebut. Walaupun setelah menulis surat kepada responden-responden,

pihak responden dikatakan gagal untuk memulangkan barangan yang disita kepada perayu. Semasa satu pemeriksaan bersama, didapati bahawa barang-barang perayu telah rosak dengan teruk. Oleh itu, perayu telah memfailkan permohonan ke Mahkamah Tinggi untuk memulakan prosiding semakan kehakiman terhadap responden-responden dan memohon, antara lain, (i) deklarasi bahawa penyitaan tersebut dilaksanakan tanpa sebab yang munasabah; dan (ii) ganti rugi bagi kerugian yang dialami oleh perayu akibat penyitaan yang salah di sisi undang-undang. Dalam menolak permohonan perayu, Mahkamah Tinggi telah memutuskan bahawa penyitaan tersebut dibuat dengan sebab yang munasabah dalam melaksanakan tugasan penyiasatan. Oleh itu, rayuan ini.

**Diputuskan (menolak rayuan dengan kos)**
**Oleh Zaharah Ibrahim HMR menyampaikan penghakiman mahkamah:**

**(1)** Semasa carian dibuat, tiada lesen dikeluarkan bagi pemasangan mesin-mesin dan alatan mereplikasi DVD di premis baru. Oleh itu, tiada sebarang kod pengeluar dinyatakan dalam lesen berkenaan premis itu bagi pemasangan mesin-mesin dan alatan di situ. Dengan itu, penyitaan mesin-mesin dan alatan tersebut jelas dibuat dengan kepercayaan munasabah bahawa ia mengandungi maklumat berkenaan suatu kesalahan, yang menjadi sebab carian dilakukan. Penyitaan tersebut, dengan itu, adalah di bawah ruang lingkup kuasa yang diberikan kepada responden-responden di bawah s. 38(2) Akta.

**(2)** Kuasa untuk menentukan kemunasabahan rampasan barang-barang yang disita di bawah s. 38 Akta tertakluk kepada pegawai penyitaan. Berdasarkan fakta, pegawai penyitaan memutuskan bahawa adalah munasabah untuk merampas barang-barang dari premis baru tersebut dan ia dilakukan secara *bona fide* dalam melaksanakan tugasan siasatan di bawah Akta, secara khususnya, kuasa di bawah s. 38(2) Akta.

**(3)** Responden kedua, yang merupakan pengawal, terangkum di bawah s. 52(a) Akta dan dilindungi sepenuhnya di bawah Akta. Penyitaan mesin-mesin, antara lain, telah dilakukan bagi melaksanakan kehendak Akta. Oleh itu, responden kedua dilindungi daripada sebarang tindakan berkenaan perbuatan sebegitu.

A **(4)** Tiada kausa tindakan yang juga boleh dikenakan terhadap responden pertama memandangkan penyitaan mesin-mesin, alatan dan barang-barang lain dilaksanakan oleh penolong pengawal cakera optik, yang dalam rangka kerja Akta, terangkum di bawah kawalan dan pengawasan responden
B kedua. Tiada apa-apa boleh ditunjukkan bahawa responden pertama telah memberi perintah atau arahan yang menyebabkan carian, penyitaan dan rampasan itu dilakukan. Penolong pengawal bukan di bawah kawalan dan pengawasan responden pertama dalam konteks Akta.

C **(5)** Tuntutan perayu bagi deklarasi dan ganti rugi hanya boleh berjaya jika penyitaan dibuat tanpa sebab yang munasabah. Berdasarkan fakta, penyitaan tersebut dibuat dengan kepercayaan munasabah bahawa adanya maklumat di
D dalamnya berkenaan suatu kesalahan yang terhadapnya carian dibuat di premis baru itu. Selanjutnya, fakta bahawa, antara lain, kod pengeluar telah dikeluarkan bagi mesin-mesin di bawah lesen berlainan bagi premis lama dan digunakan untuk mesin-mesin yang dipasang di premis baru adalah
E mencukupi untuk membuktikan sebab munasabah dan menafikan relif yang dituntut di bawah s. 48 Akta.

**Legislation referred to:**
Optical Discs Act 2000, ss. 2(1), 5, 38(2), (7), 39, 48, 52(a)
Rules of the High Court 1980, O. 53

F
*For the appellant - Cecil Abraham (S Nantha Balan, Gabriel Daniel & Paul Ong with him); M/s Paul Ong & Assocs*
*For the respondents - Shamsul Bohassan; SFC*

*[Editor's note: For the High Court judgment, please see Empayar Canggih Sdn*
G *Bhd v. Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia & Anor [2010] 9 CLJ 46]*

*Reported by Kumitha Abd Majid*

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## JUDGMENT

**Zaharah Ibrahim JCA:**

### Introduction

**[1]** This is an appeal against the decision of the High Court which dismissed the appellant's application for judicial review under O. 53 of the Rules of the High Court 1980.

### Background Facts

**[2]** The appellant carried on the business of replicating video compact discs (VCD) and compact discs (CD) at No 200 Jalan 1, Taman Perindustrian Ehsan Jaya, Kepong, Kuala Lumpur ('the old premises').

**[3]** The appellant was granted an optical discs manufacturing licence by the Ministry of Domestic Trade and Consumer Affairs ('the Domestic Trade Ministry') under the Optical Discs Act 2000 ('the ODA') valid for one year, from 19 March 2005 until 18 March 2006 for its VCD and CD replicating business at the old premises.

**[4]** The appellant was desirous of upgrading its business to that of replicating digital video compact discs (DVD). It intended to do so at its new premises located at SD11, Jalan KIP 11, Taman Perindustrian KIP, Kuala Lumpur ('the new premises').

**[5]** The appellant was granted a manufacturing licence under the Industrial Co-ordination Act 1975 from the Ministry of International Trade and Industry to carry on manufacturing operations (to manufacture optical discs) at the new premises, with effect from 4 August 2005.

**[6]** However, to enable the appellant to carry on the business of replicating DVDs at the new premises, it needed a licence from the Domestic Trade Ministry under the ODA.

**[7]** On 28 February 2006 the appellant applied to the Domestic Trade Ministry for renewal of its existing licence under the ODA, and to operate the DVD replicating business at the new premises.

**[8]** On the night of 2 March 2006, about 11.30pm, the appellant's new premises were searched by officers of the Domestic Trade Ministry accompanied by representatives of the

A Motion Pictures Association and International Federation of Phonographic Industries. At this point in time no licence under the ODA had been granted yet in respect of the DVD replicating business at the new premises.

B **[9]** The appellant's machines and equipment were dismantled, seized and removed from the premises, together with other items.

**[10]** There was no prosecution against the appellant subsequent to the search and seizure.

C **[11]** The appellant then wrote to the respondents seeking the return of the seized machines, equipment and other items but received no response.

**[12]** On 19 June 2006, the appellant filed an application for leave
D to commence judicial review proceedings against the respondents. The appellant was seeking:

(a) a writ of *certiorari* to quash the decision of the second respondent who decided not to release the seized machines,
E equipment and other items; and

(b) a writ of *mandamus* to compel the second respondent to release and return the seized machines, equipment and other items in good working order.

F **[13]** The attorney general was duly served with a copy of the application but did not object to the application.

**[14]** On 30 April 2008, leave was granted.

**[15]** According to the appellant, during the hearing of the leave
G application, the appellant was shown by the Senior Federal Counsel a letter dated 22 February 2007 from the Domestic Trade Ministry asking the appellant to take back the seized machines and equipment. The appellant claimed to have never received the letter.

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**[16]** The appellant inquired from the Domestic Trade Ministry as to the condition of the seized machines and equipment but received no response.

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**[17]** On 26 June 2009, the learned High Court Judge directed the parties to conduct a joint inspection of the seized machines and equipment.

**[18]** The joint inspection was carried out during which the machines, equipment and other items were found to have been badly damaged. By this time, the machines had also become obsolete as new technology had come into the market.

**[19]** The appellant subsequently amended its application. The reliefs sought after the amendment were:

> (A) satu perintah deklarasi bahawa penyitaan mesin-mesin, peralatan dan barangan pemohon oleh responden-responden pada 2 Mac 2006 hingga 4 Mac 2006 di kilang pemohon di SD11 Jalan KIP11 Taman Perindustrian KIP 52100 Kuala Lumpur ("premis tersebut") serta kerosakan ke atas premis tersebut akibat penyitaan tersebut telah dilaksanakan tanpa sebab yang munasabah dan adalah salah di sisi undang-undang;
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> (Our translation:
>
> [A] an order declaring that the seizure of the applicant's machines, equipment and things by the respondents on 2 March 2006 until 4 March 2006 at the applicant's factory at SD11 Jalan KIP11 Taman Perindustrian KIP 52100 Kuala Lumpur ("the said premises") and the damage to the said premises due to the seizure was carried out without reasonable cause and is unlawful)
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> (B) ganti rugi yang dialami oleh pemohon akibat penyitaan oleh responden-responden ditaksirkan oleh mahkamah yang mulia dan dibayar oleh responden-responden kepada pemohon;
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> (Our translation:
>
> (B) damages suffered by the applicant due to the seizure by the respondents be assessed by this honourable court and paid by the respondents to the applicant;)

## High Court Decision

**[20]** The learned High Court Judge found that the search of the new premises and the seizure of the machines, equipment and other items were made with reasonable cause in the exercise of an investigative function.

**[21]** The learned High Court Judge further held, relying *inter alia* on:

(i) Gordon; *Judicial Review and Crown Office Practice* [1999];

(ii) Clive Lewis; *Judicial Remedies in Public Law* (4th edn.); and

(iii) Michael Supperstone and James Goudie; *Judicial Review* [1997],

that a claim for damages in a judicial review application can only succeed if the applicant proves that there has been an infringement of the principles of administrative law and he has a right to damages at private law if he initiates an ordinary action.

**[22]** The learned High Court Judge found that on the facts of the application and on the basis of his finding that the seizure was made with reasonable cause in the exercise of an investigative function, the appellant's application could not succeed. The application was dismissed with costs to be taxed.

## The Appeal

**[23]** During his submissions before us, learned counsel for the appellant stated that the appellant was "not challenging the right to conduct the raid". In other words, the appellant conceded that there was reasonable cause for the raid on the new premises.

**[24]** After hearing the submissions of learned counsel for the appellant it is clear to us that the appellant's main challenge was directed at the acts of dismantling, removing and keeping of the machines and equipment seized at the new premises.

**[25]** However, as we have set out above, the appellant's amended application sought a declaration that the seizure of the machines, equipment and other items was without reasonable cause and was unlawful. The appellant also sought damages for the loss sustained due to the damage caused to the machines and equipment and the new premises as a result of the alleged unlawful seizure.

**[26]** In the light of the nature of the declaration sought, it is the seizure that we must deal with.

*Seizure Of Machines etc*

**[27]** The search at the new premises appeared to have been conducted without a warrant. It must therefore have been conducted under s. 39 of the ODA. That section grants the officers conducting the search the full powers provided for in s. 38 of the ODA as if the search was conducted under a warrant issued under s. 38.

**[28]** Under s. 38(2) of the ODA, an assistant controller conducting a search of any premises may "seize any article, optical disc, thing, book or document, including computerised data, which contain or is reasonably believed to contain information as to any offence suspected to have been committed and is likely to disclose evidence of the commission of any offence under this Act." The term "article" is defined in s. 2(1) of the ODA to include any "device, contrivance, machine or equipment".

**[29]** The fact that the appellant had abandoned its challenge against the search conducted on the new premises is tacit admission that there was reasonable cause for believing that an offence under the ODA had been or was being committed at/on the new premises.

**[30]** The machines and equipment were without the proper manufacturer's code. These codes are codes specified in the licence issued for approved premises where the machines and/or equipment are installed.

**[31]** It was not in dispute that there was no licence issued for the installation at the premises of the DVD replicating machines and equipment at the new premises at the time of the search, and therefore there could not be any manufacturer's code specified in any licence in respect of those premises for the machines and equipment installed there.

**[32]** The codes in the appellant's possession were for Krauses Massei KM 80-190 CD 94 machines installed and approved for such installation at its old premises. The machines/equipment at the new premises were "Staeg Hamatech" and "Anwell DVD Smartline". Yet, the appellant used those same codes for the machines at the new premises.

**[33]** That being the case, the seizure of the machines and equipment was clearly done in the reasonable belief that they contain information as to the commission of some offence, for which the search was conducted in the first place. Such seizure was therefore within the ambit of the powers conferred on the respondents by s. 38(2) of the ODA.

*Removal Of Machines etc*

**[34]** We shall now deal with the removal of the seized items from the new premises.

**[35]** The appellant's contention with regard to the removal of the seized items from the new premises was that since it was not practicable for the machines and equipment to be removed from the new premises, the respondents had acted unreasonably in dismantling them and taking them away. We were referred to s. 38(7) of the ODA in this connection.

**[36]** Section 38(7) of the ODA is as follows:

> (7) Where, by reason of its nature, size or amount, it is not practicable to remove any article, optical disc, thing, book or document, seized under this section, the seizing officer shall, by any means seal the article, optical disc, thing, book or document in the premises or container in which it is found.

**[37]** We agree with learned Senior Federal Counsel that the power to determine the practicability of removing items seized under s. 38 lies with the seizing officer.

**[38]** The determination as to the practicability of removing the items from any premises must surely not only be viewed from the perspective of size etc, but also the possibility that the machines and equipment left installed at the premises could be used or continued to be used in contravention of the ODA. Only the seizing officer would be able to make the appropriate decision in the circumstances of each case. In this case he obviously decided that it was practicable to remove the items from the new premises. Under s. 38(7) of the ODA, it is when he decides NOT to remove the items that it becomes incumbent upon him to seal the items in the premises.

**[39]** We are therefore of the view that the removal of the seized items was done in the *bona fide* exercise of investigative functions under the ODA, in particular the powers under sub-s. 38(2) of the ODA.

*Sections 48 and 52 of the ODA*

**[40]** The learned Senior Federal Counsel drew our attention to ss. 48 and 52 of the ODA in his submission that the seizure, removal and detention of the machines, equipment and other items by the officers of the Domestic Trade Ministry are acts which fall beyond the scope of judicial review.

**[41]** Sections 48 and 52 of the ODA read as follows:

> No costs or damages arising from seizure to be recoverable
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> 48. No person shall, in any proceedings before any court in respect of any article, optical disc, thing, book or document seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.
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> ...
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> Protection of officers
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> 52. No action or prosecution shall be brought, instituted or maintained in any court against:
>
> (a) the controller, a deputy controller, an assistant controller or any officer duly appointed under this Act or a police officer for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act; and
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> (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the controller, a deputy controller, an assistant controller or any officer duly appointed under this Act or a police officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

*Section 52*

**[42]** The appellant brought this action against Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia, (Director-General, Enforcement

A Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia) and Dato' Seri Talaat Haji Husain, Ketua Setiausaha/ Pengawal Cakera Optik (secretary general/controller of optical discs).

B **[43]** The second respondent, being the controller, clearly falls within the ambit of s. 52(a) and is fully protected against any action for "any act ordered or done for the purpose of carrying into effect this Act". The search on the new premises, the seizure of the machines, equipment and other items and their removal C from the new premises, as we have discussed above, are acts ordered or done for the purpose of carrying into effect the ODA. He is thus protected against any action in respect of such acts.

**[44]** One Encik Johary Yacob, in his affidavit affirmed on D 27 November 2008, stated that he was an assistant controller of optical discs in the optical discs special unit under the control and supervision of the second respondent. En Johary also stated in that same affidavit that the search on the new premises, the seizure of the machines, equipment and other items and their E removal from the new premises were carried out by a team of assistant controllers of optical discs led by one En Syahrul Hisyam Abdul Karim.

**[45]** As the persons who conducted the search, made the seizure and did the removal were all assistant controllers, and the acts F were done for the carrying into effect the provisions of the ODA, they too, in the same manner as the second respondent, would fall within the ambit of the protection of s. 52(a) of the ODA.

**[46]** With regard to the first respondent, we note that the G learned Senior Federal Counsel did not address this issue. However, as the search on the new premises, the seizure of the machines, equipment and other items and their removal from the new premises were carried out by assistant controllers of optical discs who were, within the framework of the ODA, under the H control and supervision of the second respondent as controller, we fail to see what cause of action can be sustained against the first respondent.

**[47]** There was nothing to show that the first respondent gave I any of the orders, directions or instructions leading to the search, seizure and removal being carried out. He was not the controller. The assistant controllers were not under his control and

supervision in the context of the ODA. The ODA has no role designated for Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia or Director General, Enforcement Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia.

*Section 48*

**[48]** Due to the provisions of s. 48 of the ODA, the appellant's claim for the declaration and damages sought can only succeed if the seizure was made without reasonable cause.

**[49]** We have found as discussed above that the seizure of the machines, equipment and other items was done in the reasonable belief that they contain information as to the commission of some offence, for which the search at the new premises was conducted.

**[50]** We note that En Syahrul Hisyam Abdul Karim, the assistant controller who led the team conducting the search, had affirmed an affidavit on 12 October 2009 and in that affidavit he stated as follows:

> 11. Setelah berjaya memasuki bangunan, pemeriksaan saya dalam kilang mendapati mesin yang ada dalam kilang tersebut sedang melakukan proses cetakan atas cakera padat.
>
> 12. Saya meneruskan pemeriksaan dan mendapati ada dua baris mesin yang digunakan untuk menghasilkan cakera optik.
>
> 13. Pemeriksaan saya ke atas mesin mendapati terdapat bekalan kuasa disalurkan kepada mesin dan suis kuasa sahaja yang belum terpasang ("switch-on") dan saya mendapati ada satu beg besar yang tergantung pada kren dan di bahagian bawahnya terdapat saluran gelung yang membawa kepada mesin yang bertujuan untuk mengeringkan kelembapan bahan "polycarbonate resin".
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> 14. Selanjutnya, saya juga mendapati ada tujuh lagi unit beg besar yang mengandungi "polycarbonate resin" terletak atas pallet kayu dan masih dibungkus dengan baik.

**[51]** The appellant contended, in its supporting affidavit affirmed by En Liew Chee Hian on 19 September 2006, that what was being done on the night of the search was merely the printing of the surface of the optical discs using an offset printing machine. That statement implied that no manufacturing of optical discs in contravention of s. 5 of the ODA was being carried on at the new premises.

A **[52]** Section 2(1) of the ODA defines "manufacture" to mean "the processes and activities involved in the manufacturing of optical discs, including mastering or replicating or both".

**[53]** To our minds, the presence of eight bags of polycarbonate
B resin which was obviously the raw material for the manufacture of optical discs (with one already in place at one of the machines), and the admitted activity of printing on the surface of optical discs, as well as the fact that manufacturer's codes issued for machines under a different licence for the old premises were being used for
C machines installed in the new premises, are sufficient to constitute reasonable cause so as to deny the appellant the relief sought in these proceedings under s. 48 of the ODA.

**Conclusion**

D **[54]** We therefore agree with the learned Senior Federal Counsel that the seizure of the machines, equipment and other items by the team of assistant controllers of optical discs and the removal of the seized items were acts which fall outside the scope of judicial review due to the provisions of ss. 48 and 52 of the ODA.

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**Decision**

**[55]** We are unanimous in our view that the learned High Court Judge had arrived at the correct decision.

F **[56]** We therefore dismiss this appeal with fixed costs of RM20,000 to be paid to the respondents.

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